



Report to the Auburn City Council

Action Item

13

Agenda Item No.

City Manager's Approval

To: Mayor and City Council
From: Councilman Kevin Hanley
Date: March 8, 2010
Subject: Staff Analysis of Potential Charter City Status for Auburn

The Issue

Shall the City Council direct staff to provide an analysis of a Charter City status for the City of Auburn?

Conclusion and Recommendation

That the City Council directs staff to provide an analysis of a Charter City status for the City of Auburn as outlined in this report.

Background

At the February 23rd meeting of the Chamber Forum (i.e., Meddlers), I presented the idea that City Council and voters should consider taking advantage of the provision in the California Constitution which allows a city to maximize home rule regarding municipal affairs by converting to a charter city. The general consensus was that charter city status for Auburn could provide important flexibility and financial benefits for residents, however, it would be wise to first direct city staff to analyze the various aspects of converting from a general law city to a charter city before a decision is made by the City Council to either move forward with this idea or not. I agree with this prudent approach.

I'm not asking council members to either support or oppose the charter idea for Auburn but to support asking staff to fully and objectively analyze it and report their findings to us and the public. Ultimately, council members, armed with sufficient information, should make the final policy decision on whether to pursue charter city status for Auburn. Feel free to suggest additional questions that you may want staff to look at, if I've missed anything.

Based on input from attendees at the Chamber Forum and discussions with Auburn residents, I recommend that the City Council direct staff to analyze the following questions:

1. How would volunteer activities like Project Auburn be impacted if AB 2537 of 2008, which provides a temporary exemption (until 1/1/12) from the requirement that

- volunteers be paid the prevailing wage on public works projects is not extended by the California Legislature?
2. How much money could the city potentially save if under Auburn's Charter, the city was exempted from requiring contractors to pay their workers the state's prevailing wage on municipally-funded capital projects? Include in one of the scenarios a wastewater treatment plant upgrade or regional pipeline paid solely by ratepayers.
 3. Could the city, under Auburn's Charter that exempts it from the state's public contracting laws, have more flexibility in awarding contracts to local bidders and use Design-Build contracts?
 4. What are the pros and cons of charter city status for Auburn?
 5. Has there ever been a charter city that repealed its charter and reverted back to a general law city?

Background Documents

I want to share with council members a number of documents related to charter cities. Included are a number of documents produced by the League of California Cities that explain the differences between a general law city and a charter city. I've also included the introductory section of a report relating to prevailing wage laws and charter cities, a newspaper article that touches on various issues considered by residents and council members in the City of El Centro, the state's most recent charter city. As an example of what a charter looks like, I provided a copy of the Charter of the City of Vista.

I've included the Senate Floor Analysis of AB 2537 of 2008, which temporarily (until 1/1/12) exempts cities from paying volunteers the prevailing wage when they put in public funds in volunteer-led activities like Project Auburn. This bill was passed on the last session day of 2008, which causes me concern with regard to the Legislature's future intentions on this law. If the AFL-CIO decides to oppose a future extension bill, the exemption for volunteers will be dead.

Alternatives

Do not perform analysis.

Fiscal Impact

None.

Attachments

- Exhibit A: What is a Charter? League of California Cities.
Exhibit B: Foundation Aspects of a Charter, League of California Cities.
Exhibit C: What is in a Charter? League of California Cities.
Exhibit D: General Law City v. Charter City, League of California Cities.
Exhibit E: Process used to adopt a Charter, League of California Cities.
Exhibit F: How to amend or repeal a Charter. League of California Cities.
Exhibit G: "Are Charter Cities Taking Advantage of Prevailing Wage Exemptions?"
Associated Builders and Contractors, 2009.
Exhibit H: "Charter Cities: Charting their Own Paths...But Not Without
Obstacles," 11/16/09.
Exhibit I: Charter of the City of Vista.
Exhibit J: Senate Analysis of AB 2537 (Furutani), Statutes of 2008.

What is a charter?

A city charter is a unique document that, in many ways, acts like a constitution for the city adopting it. It can only be adopted, amended or repealed by a majority vote of a city's voters. The primary advantage of a charter is that it allows greater authority for a city's governance than that provided by state law. For example, a city may tailor its organization and elective offices, taking into account the unique local conditions and needs of the community.

A charter transfers the power to adopt legislation affecting municipal affairs from the state legislature to the city adopting it. A city operating under a charter can acquire full control over its municipal affairs. These affairs are unaffected by the general laws passed by the state legislature on the same subject matters. This, in effect, gives the local voters more control over their local government and the affairs of the city. However, a city operating under a charter is still subject to the general laws, as passed by the state legislature, on affairs that are not municipal in nature, and are of statewide concern (e.g., California Vehicle Code).

It is the scope of the term "municipal affairs" that provides the opportunity for uncertainty. No easy analytical test exists. The threshold issue is whether there is a conflict between state law and a charter city enactment. The next issue is whether the state regulation addressed an issue of "state wide concern." Courts analyze these conflicts on a case-by-case basis.

Foundational aspects of charter cities

What is the Constitutional Framework for Charter Cities?

Article XI, section 3(a) of the California Constitution authorizes the adoption of a city charter and provides such a charter has the force and effect of state law. Article XI, section 5(a), the "home rule" provision, affirmatively grants to charter cities supremacy over "municipal affairs." However, the California Constitution does not define the term "municipal affair."

What are "Municipal Affairs?"

The home rule provision of the California Constitution authorizes a charter city to exercise plenary authority over municipal affairs, free from any constraint imposed by the general law and subject only to constitutional limitations. See Cal. Const. art. XI § 5(a); *Ex Parte Braun*, 141 Cal. 204, 209 (1903); *Bishop v. City of San Jose*, 1 Cal. 3d 56, 61 (1969); *Comm. of Seven Thousand v. Super. Ct. (City of Irvine)*, 45 Cal.3d 491 (1988).

How Do the Courts Distinguish Between Municipal and Statewide Concerns?

Whether a given activity is a municipal affair over which a city has sovereignty, or a statewide concern, over which the legislature has authority, is a legal determination for the courts to resolve. Thus, the determination of whether a given activity is a municipal affair or statewide concern is done on a case-by-case basis. The court's determination will depend on the particular facts and circumstances of each case. See *In Re Hubbard*, 62 Cal. 2d 119, 128 (1964). Keep in mind that the concept of "municipal affairs" is a fluid one that changes over time as local issues become statewide concerns. See *Issac v. City of Los Angeles*, 66 Cal. App. 4th 586 (1998).

What Activities Have the Courts Classified As Municipal Affairs?

There are some areas that the courts have consistently classified as municipal affairs. Examples include the following:

- Municipal Election Matters. See *Mackey v. Thiel*, 262 Cal. App. 2d 362 (1968).
- Procedures for Initiative, Referendum and Recall. See *Lawing v. Faul*, 227 Cal. App. 2d 23, 29 (1964).
- Procedures for Adopting Ordinances. See *Brougher v. Board of Public Works*, 205 Cal. 426 (1928).
- Compensation of City Officers and Employees. Cal. Const. art. XI, § 5(b); See *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal. 3d 296 (1979); but see *San Leandro Police Officers Association v. City of San Leandro*, 55 Cal. App. 3d 553 (1976) (labor relations is not a municipal affair; Charter cities are subject to the Meyers-Milias Brown Act. Cal. Gov't Code § 3500).
- Processes Associated with City Contracts. See *First Street Plaza Partners v. City of Los Angeles*, 65 Cal. App. 4th 650 (1998); but see *Domar Electric, Inc. v. City of Los Angeles*, 41 Cal. App. 4th 810 (1995) (state law establishing employment policy may preempt local regulation of bidding criteria).

- Financing Public Improvements. See *City of Santa Monica v. Grubb*, 245 Cal. App. 2d 718 (1996).
- Making Charitable Gifts of Public Funds for Public Purposes. See Cal. Const. art. XVI, § 6; *Tevis v. City and County of San Francisco*, 43 Cal. 2d 190 (1954).
- Term Limits for Council Members. See *Cawdrey v. City of Redondo Beach*, 15 Cal. App. 4th 1212 (1993); but see Cal. Gov't Code § 36502(b) (regulating term limits).
- Land Use and Zoning Decisions (with a few exceptions). See *Brougher v. Bd. of Pub. Works*, 205 Cal. 426 (1928).

What Activities Have the Courts Classified as Statewide Concerns?

The following have consistently been classified by the courts as matters of statewide concern:

- School Systems. *Whisman v. San Francisco Unified Sch. Dist.*, 86 Cal. App. 3d 782, 789 (1978).
- Traffic and Vehicle Regulation. Cal. Veh. Code § 21.
- Licensing of Members of a Trade or Profession. *City and County of San Francisco v. Boss*, 83 Cal. App. 2d 445 (1948).
- Tort Claims Against a Governmental Entity. *Helbach v. City of Long Beach*, 50 Cal. App. 2d 242, 247 (1942).
- Open and Public Meetings. Ralph M. Brown Act. Cal. Gov't Code §§ 54951, 54953(a).
- Exercise of the Power of Eminent Domain. *Wilson v Beville*, 47 Cal. 2d 852, 856 (1957).

What is in a charter?

While a city charter is not required to have any particular provisions in it, a city will often reserve for itself the greatest amount of power it can when it adopts a charter. To accomplish this goal, the charter must include a declaration that it is the intention of the city to avail itself of the full power provided by the state constitution to charter cities. However, the city is not required to extend the breadth of its charter any further than it wishes.

Some of the common areas that are explicitly regulated in a charter are:

- The date and conduct of city elections;
- Regulations on the appointment of municipal officials;
- The terms and payment of municipal officials;
- The process for removal of municipal officials;
- Form of government;
- Budget adoption;
- The number, pay, qualifications, and appointment of deputies, clerks, and other employees that each municipal officer will have;
- Sub-government in all or part of the city;
- The tenure of office for deputies, clerks, and other employees;
- The process for removal of such deputies, clerks, and other employees; and
- The constitution, regulation, and government of the local police force.

A number of California cities' charters are available online. The National Civic League also has a model charter project.

General Law City v. Charter City

Characteristic	General Law City	Charter City
Ability to Govern Municipal Affairs	Bound by the state's general law, regardless of whether the subject concerns a municipal affair.	Has supreme authority over "municipal affairs." Cal. Const. art. XI, § 5(b).
Form of Government	State law describes the city's form of government. For example, Government Code section 36501 authorizes general law cities be governed by a city council of five members, a city clerk, a city treasurer, a police chief, a fire chief and any subordinate officers or employees as required by law. City electors may adopt ordinance which provides for a different number of council members. Cal. Gov't section 34871. The Government Code also authorizes the "city manager" form of government. Cal. Gov't Code § 34851.	Charter can provide for any form of government including the "strong mayor," and "city manager" forms. See Cal. Const. art. XI, § 5(b); Cal. Gov't Code § 34450 <i>et seq.</i>
Elections Generally	Municipal elections conducted in accordance with the California Elections Code. Cal. Elec. Code §§ 10101 <i>et seq.</i>	Not bound by the California Elections Code. May establish own election dates, rules, and procedures. See Cal. Const. art. XI, § 5(b); Cal. Elec. Code §§ 10101 <i>et seq.</i>
Methods of Elections	Generally holds at-large elections whereby voters vote for any candidate on the ballot. Cities may also choose to elect the city council "by" or "from" districts, so long as the election system has been established by ordinance and approved by the voters. Cal. Gov't Code § 34871. Mayor may be elected by the city council or by vote of the people. Cal. Gov't Code §§ 34902.	May establish procedures for selecting officers. May hold at-large or district elections. See Cal. Const. art. XI, § 5(b).
City Council Member Qualifications	<p>Minimum qualifications are:</p> <ol style="list-style-type: none"> 1. United States citizen 2. At least 18 years old 3. Registered voter 4. Resident of the city at least 15 days prior to the election and throughout his or her term 5. If elected by or from a district, be a resident of the geographical area comprising the district from which he or she is elected. <p>Cal. Elec. Code § 321; Cal. Gov't Code §§ 34882, 36502; 87 Cal. Op. Att'y Gen. 30 (2004).</p>	Can establish own criteria for city office provided it does not violate the U.S. Constitution. Cal. Const. art. XI, § 5(b), 82 Cal. Op. Att'y Gen. 6, 8 (1999).

Characteristic	General Law City	Charter City
Public Funds for Candidate in Municipal Elections	No public officer shall expend and no candidate shall accept public money for the purpose of seeking elected office. Cal. Gov't Code § 85300.	Public financing of election campaigns is lawful. <i>Johnson v. Bradley</i> , 4 Cal. 4th 389 (1992).
Term Limits	May provide for term limits. Cal. Gov't Code § 36502(b).	May provide for term limits. Cal. Const. art. XI, § 5(b); Cal Gov't Code Section 36502 (b).
Vacancies and Termination of Office	An office becomes vacant in several instances including death, resignation, removal for failure to perform official duties, electorate irregularities, absence from meetings without permission, and upon non-residency. Cal. Gov't Code §§ 1770, 36502, 36513.	May establish criteria for vacating and terminating city offices so long as it does not violate the state and federal constitutions. Cal. Const. art. XI, § 5(b).
Council Member Compensation and Expense Reimbursement	Salary-ceiling is set by city population and salary increases set by state law except for compensation established by city electors. See Cal. Gov't Code § 36516. If a city provides any type of compensation or payment of expenses to council members, then all council members are required to have two hours of ethics training. See Cal. Gov't Code §§ 53234 - 53235.	May establish council members' salaries. See Cal. Const. art. XI, § 5(b). If a city provides any type of compensation or payment of expenses to council members, then all council members are required to have two hours of ethics training. See Cal. Gov't Code §§ 53234 - 53235.
Legislative Authority	Ordinances may not be passed within five days of introduction unless they are urgency ordinances. Cal. Gov't Code § 36934. Ordinances may only be passed at a regular meeting, and must be read in full at time of introduction and passage except when, after reading the title, further reading is waived. Cal. Gov't Code § 36934.	May establish procedures for enacting local ordinances. <i>Brougher v. Bd. of Public Works</i> , 205 Cal. 426 (1928).
Resolutions	May establish rules regarding the procedures for adopting, amending or repealing resolutions.	May establish procedures for adopting, amending or repealing resolutions. <i>Brougher v. Bd. of Public Works</i> , 205 Cal. 426 (1928).
Quorum and Voting Requirements	A majority of the city council constitutes a quorum for transaction of business. Cal. Gov't Code § 36810. All ordinances, resolutions, and orders for the payment of money require a recorded majority vote of the total membership of the city council. Cal. Gov't Code § 36936. Specific legislation requires supermajority votes for certain actions.	May establish own procedures and quorum requirements. However, certain legislation requiring supermajority votes is applicable to charter cities. For example, see California Code of Civil Procedure section 1245.240 requiring a vote of two-thirds of all the members of the governing body unless a greater vote is required by charter.

Characteristic	General Law City	Charter City
Rules Governing Procedure and Decorum	<p>Ralph Brown Act is applicable. Cal. Gov't Code §§ 54951, 54953(a).</p> <p>Conflict of interest laws are applicable. See Cal. Gov't Code § 87300 <i>et seq.</i></p>	<p>Ralph Brown Act is applicable. Cal. Gov't Code §§ 54951, 54953(a).</p> <p>Conflict of interest laws are applicable. See Cal. Gov't Code § 87300 <i>et seq.</i></p> <p>May provide provisions related to ethics, conflicts, campaign financing and incompatibility of office.</p>
Personnel Matters	<p>May establish standards, requirements and procedures for hiring personnel consistent with Government Code requirements.</p> <p>May have "civil service" system, which includes comprehensive procedures for recruitment, hiring, testing and promotion. See Cal. Gov't Code § 45000 <i>et seq.</i></p> <p>Meyers-Milias-Brown Act applies. Cal. Gov't Code § 3500.</p> <p>Cannot require employees be residents of the city, but can require them to reside within a reasonable and specific distance of their place of employment. Cal. Const. art. XI, § 10(b).</p>	<p>May establish standards, requirements, and procedures, including compensation, terms and conditions of employment for personnel. See Cal. Const. art. XI, § 5(b).</p> <p>Meyers-Milias-Brown Act applies. Cal. Gov't Code § 3500.</p> <p>Cannot require employees be residents of the city, but can require them to reside within a reasonable and specific distance of their place of employment. Cal. Const. art. XI, section 10(b).</p>
Contracting Services	<p>Authority to enter into contracts to carry out necessary functions, including those expressly granted and those implied by necessity. See Cal. Gov't Code § 37103; <i>Carruth v. City of Madera</i>, 233 Cal. App. 2d 688 (1965).</p>	<p>Full authority to contract consistent with charter.</p> <p>May transfer some of its functions to the county including tax collection, assessment collection and sale of property for non-payment of taxes and assessments. Cal. Gov't Code §§ 51330, 51334, 51335.</p>

Characteristic	General Law City	Charter City
Public Contracts	<p>Competitive bidding required for public works contracts over \$5,000. Cal. Pub. Cont. Code § 20162. Such contracts must be awarded to the lowest responsible bidder. Pub. Cont. Code § 20162. If city elects subject itself to uniform construction accounting procedures, less formal procedures may be available for contracts less than \$100,000. See Cal. Pub. Cont. Code §§ 22000, 22032.</p> <p>Contracts for professional services such as private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms need not be competitively bid, but must be awarded on basis of demonstrated competence and professional qualifications necessary for the satisfactory performance of services. Cal. Gov't Code § 4526.</p>	<p>Not required to comply with bidding statutes provided the city charter or a city ordinance exempts the city from such statutes, and the subject matter of the bid constitutes a municipal affair. Pub. Cont. Code § 1100.7; see <i>R & A Vending Services, Inc. v. City of Los Angeles</i>, 172 Cal. App. 3d 1188 (1985); <i>Howard Contracting, Inc. v. G.A. MacDonald Constr. Co.</i>, 71 Cal. App. 4th 38 (1998).</p>
Payment of Prevailing Wages	<p>In general, prevailing wages must be paid on public works projects over \$1,000. Cal. Lab. Code § 1771. Higher thresholds apply (\$15,000 or \$25,000) if the public entity has adopted a special labor compliance program. See Cal. Labor Code § 1771.5(a)-(c).</p>	<p>Historically, charter cities have not been bound by state law prevailing wage requirements so long as the project is a municipal affair, and not one funded by state or federal grants. <i>Vial v. City of San Diego</i>, 122 Cal. App. 3d 346, 348 (1981). However, there is a growing trend on the part of the courts and the Legislature to expand the applicability of prevailing wages to charter cities under an analysis that argues that the payment of prevailing wages is a matter of statewide concern. The California Supreme Court declined an opportunity to resolve the issue. See <i>City of Long Beach v. Dept. of Indus. Relations</i>, 34 Cal. 4th 942 (2004).</p>

+ 2009 City of Vista case, can exempt from prevailing wage.

Characteristic	General Law City	Charter City
Finance and Taxing Power	<p>May impose the same kinds of taxes and assessment as charter cities. See Cal. Gov't Code § 37100.5.</p> <p>Imposition of taxes and assessments subject to Proposition 218. Cal. Const. art. XIII C.</p> <p>Examples of common forms used in assessment district financing include:</p> <ul style="list-style-type: none"> • Improvement Act of 1911. Cal. Sts. & High. Code § 22500 <i>et seq.</i> • Municipal Improvement Act of 1913. See Cal. Sts. & High. Code §§ 10000 <i>et seq.</i> • Improvement Bond Act of 1915. Cal. Sts. & High. Code §§ 8500 <i>et seq.</i> • Landscaping and Lighting Act of 1972. Cal. Sts. & High. Code §§ 22500 <i>et seq.</i> • Benefit Assessment Act of 1982. Cal. Gov't Code §§ 54703 <i>et seq.</i> <p>May impose business license taxes for regulatory purposes, revenue purposes, or both. See Cal. Gov't Code § 37101.</p> <p>May not impose real property transfer tax. See Cal. Const. art. XIII A, § 4; Cal. Gov't Code § 53725; <i>but see</i> authority to impose documentary transfer taxes under certain circumstances. Cal. Rev. & Tax. Code § 11911(a), (c).</p>	<p>Have the power to tax.</p> <p>Have broader assessment powers than a general law city, as well as taxation power as determined on a case-by case basis.</p> <p>Imposition of taxes and assessments subject to Proposition 218, Cal. Const. art. XIII C, § 2, and own charter limitations</p> <p>May proceed under a general assessment law, or enact local assessment laws and then elect to proceed under the local law. See <i>J.W. Jones Companies v. City of San Diego</i>, 157 Cal. App. 3d 745 (1984).</p> <p>May impose business license taxes for any purpose unless limited by state or federal constitutions, or city charter. See Cal. Const. art. XI, § 5.</p> <p>May impose real property transfer tax; does not violate either Cal. Const art. XIII A or California Government Code section 53725. See <i>Cohn v. City of Oakland</i>, 223 Cal. App. 3d 261 (1990); <i>Fielder v. City of Los Angeles</i>, 14 Cal. App. 4th 137 (1993).</p>
Streets & Sidewalks	State has preempted entire field of traffic control. Cal. Veh. Code § 21.	State has preempted entire field of traffic control. Cal. Veh. Code § 21.
Penalties & Cost Recovery	May impose fines, penalties and forfeitures, with a fine not exceeding \$1,000. Cal. Gov't Code § 36901.	May enact ordinances providing for various penalties so long as such penalties do not exceed any maximum limits set by the charter. <i>County of Los Angeles v. City of Los Angeles</i> , 219 Cal. App. 2d 838, 844 (1963).

Characteristic	General Law City	Charter City
Public Utilities/Franchises	<p>May establish, purchase, and operate public works to furnish its inhabitants with electric power. See Cal. Const. art. XI, § 9(a); Cal. Gov't Code § 39732; Cal. Pub. Util. Code § 10002.</p> <p>May grant franchises to persons or corporations seeking to furnish light, water, power, heat, transportation or communication services in the city to allow use of city streets for such purposes. The grant of franchises can be done through a bidding process, under the Broughton Act, Cal. Pub. Util. Code §§ 6001-6092, or without a bidding process under the Franchise Act of 1937, Cal. Pub. Util. Code §§ 6201-6302.</p>	<p>May establish, purchase, and operate public works to furnish its inhabitants with electric power. See Cal. Const. art. XI, § 9(a); <i>Cal. Apartment Ass'n v. City of Stockton</i>, 80 Cal. App. 4th 699 (2000).</p> <p>May establish conditions and regulations on the granting of franchises to use city streets to persons or corporations seeking to furnish light, water, power, heat, transportation or communication services in the city.</p> <p>Franchise Act of 1937 is not applicable if charter provides. Cal. Pub. Util. Code § 6205.</p>
Zoning	<p>Zoning ordinances must be consistent with general plan. Cal. Gov't Code § 65860.</p>	<p>Zoning ordinances are not required to be consistent with general plan unless the city has adopted a consistency requirement by charter or ordinance. Cal. Gov't. Code § 65803.</p>

Process used to adopt a charter

There are two ways to draft and adopt a city charter. The first is to elect a charter commission. The commission then has the responsibility of debating over the provisions and the drafting of the charter. The other alternative allows the governing board of the city, on its own motion, to draft the charter. In either case, the charter is not adopted by the city until it is ratified by a majority vote of the city's voters.

When using the charter commission approach, the first step is to elect the commission. The vote to elect a charter commission is called for by either a majority vote of the city's governing body or by a petition signed by not less than fifteen percent of the registered voters within the city. If the formation of a charter commission is requested by a petition, the authority in charge of the city's registration records must verify the signatures on the petition. The expense of this verification must be paid for by the city's governing board. If the petition is verified, the city's governing board must call for an election in accordance with sections 1000 and 10403 of the California Elections Code. See Cal. Gov't Code section 34452.

Once it has been decided that a charter commission election will take place, candidates for commissioners must be nominated. Candidates for the office of charter commissioner are nominated either in the same manner as officers of the city or by petition. A candidate for charter commissioner must be a registered voter of the city. After the election of commissioners, any vacancy on the commission will be filled by a mayoral appointment. See Cal. Gov't Code section 34452.

At an election for charter commission members, the voters will vote first on the following question: "Shall a charter commission be elected to propose a new charter?" After voting on this question, the voters will then vote for the charter commission candidates. If a majority of the voters vote for the formation of a charter commission, then the top fifteen candidates for the office of charter commissioner will be organized as the city's charter commission. No commission will be formed if a majority of voters vote against the election of a charter commission. See Cal. Gov't Code section 34453.

Once formed, the charter commission will have the responsibility of developing the city's charter. After a simple majority of commissioners have decided that the proposed charter is appropriate, they file the charter with the city's clerk in preparation for a vote by the city's electorate. See Cal. Gov't Code section 34455. However, instead of sending the whole charter at once, periodically the commission may send portions of the charter to the city's electorate for a vote. See Cal. Gov't Code section 34462.

After the charter (or portions of it) has been filed, it must be copied in type greater than 10 point and either mailed to all the voters of the city or made available to those citizens who wish to review it before the election. The city may show the difference between existing provisions of law and the new charter through the use of distinguished type styles, but this is not required. See Cal. Gov't Code section 34456.

After the charter has been filed with the city clerk, the city's governing board must decide whether to call a special election or to wait until the next established municipal election to submit the charter to the voters. If the city's governing board determines that a special election should be held, then they must call for that special election within 14 days of the charter being filed. The special election must be set at least 95 days after

the date from which the special election was called. See Cal. Gov't Code section 34457. In any case, the charter commission must send the charter to the voters within two years of the vote that formed the commission. Upon the expiration of the two-year time period, the commission is abolished. See Cal. Gov't Code section 34462.

The alternative to electing a charter commission is to have the city's governing board develop and draft the charter. An election to decide on the adoption of a charter may be called by initiative or the city council. See Cal. Const. art. XI, § 3. On its own motion, the city's governing board may propose a charter and submit it to the voters for adoption. See Cal. Gov't Code section 34458. With this option, the governing board can call a special election or allow the charter to be voted on at any established election date, as long as that election date is at least 88 days after the proposed charter was filed with the city clerk. See Cal. Gov't Code section 34458. As a practical matter, an election may have to be called sooner than 88 days before the election in order to meet certain notice and ballot printing deadlines.

In either case, the majority of voters must vote in favor of the proposed charter for it to be ratified. The charter will not go into effect until it has been filed and accepted by the Secretary of State. See Cal. Gov't Code section 34459. After a charter is approved by a majority vote of the voters, the mayor and city clerk shall certify that the charter was submitted to the voters of the city and that it was approved by a majority vote. See Cal. Gov't Code section 34460. One copy of the approved charter shall be filed with the County Recorder's office and one shall be kept in the City's archive. See Cal. Gov't Code section 34460. A third copy of the charter must be submitted to the Secretary of State with (1) copies of all publications and notices in connection with the calling of the election; (2) certified copies of any arguments for or against the charter proposal which were mailed to the voters; (3) a certified abstract of the vote at the election on the charter. See Cal. Gov't Code section 34460.

How to amend or repeal a charter

If a citizens group, or the city's governing body, wishes to amend or repeal a portion of the city's charter, the steps remain largely the same as they are for drafting a charter. There are, however, two notable exceptions. First, the petition calling for the repeal or amendment needs only ten percent of the electorate's signatures, instead of the previous fifteen percent. See Cal. Elec. Code sections 9215 and 9255. The other notable difference has to do with the charter itself. A city charter may establish different rules for the municipal elections process than those laid out by the state legislature in the Elections Code. If this is the case, the city's charter will govern the elections process used to appeal or amend the city's charter, instead of the general laws laid out in the Elections Code.

Are Charter Cities Taking Advantage of Prevailing Wage Exemptions?

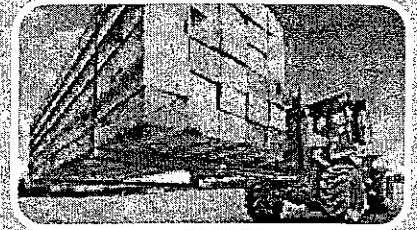


2009 EDITION

ASSOCIATED BUILDERS AND CONTRACTORS
CALIFORNIA COOPERATION COMMITTEE

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Background on Prevailing Wage Exemptions for Charter Cities

While neither the federal government nor the State of California seems capable of controlling costs or balancing its budget, city governments in California still have ample opportunities to cut costs for taxpayers and encourage economic growth in their communities. One of the most conspicuous ways for city governments to reduce spending and increase revenue is to exempt contractors from paying costly state-mandated prevailing wage rates. This report makes the following recommendations to city governments.

1. Charter cities need to exercise their right to exempt contractors from paying costly state-mandated prevailing wage rates. These exemptions would apply to (1) purely locally-funded public works projects and (2) private construction projects that receive any sort of local government subsidies or other local government benefits with an identifiable financial value.
2. General law cities should become charter cities in order to exercise their right to exempt contractors from paying costly state-mandated prevailing wage rates.

This report will make the argument for these objectives by explaining and analyzing the following issues:

1. A municipal government's status as a charter city includes the right to exempt its locally-funded construction projects (public and private) from costly state prevailing wage mandates.
2. There are numerous reasons for a municipal government to exempt its locally-funded construction projects (public and private) from costly state prevailing wage mandates. Most significantly, the State of California determines (calculates) so-called prevailing wage rates for construction trades in an absurd way that usually results in wage rates that are much costlier for local governments than market rates.

Finally, the report will provide background on where local governments have exempted locally-funded construction projects (public and private) from costly state prevailing wage mandates. It will summarize the current legislative status of prevailing wage requirements among the 114 charter cities in the State of California and report on recent legislative efforts among charter cities to change prevailing wage policies. It also contains a strategic guide for a local government to overcome the political obstacles to exempting locally-funded construction projects (public and private) from costly state prevailing wage mandates.

Under What Authority Does a Charter City Exempt Its Local Construction from Prevailing Wage Requirements?

Under Government Code Section 34100-34102, cities organized under a charter shall be "chartered cities." Cities organized under the general law shall be "general law cities."

Article IX, Section 3 of the California Constitution describes how a general law city can organize under a charter. The provisions of a charter are the law of the State and have the force and effect of legislative enactments. The League of California Cities provides information about charter cities, including a list of the 114 charter cities and the procedure to become a charter city, at this web site:

<http://www.cacities.org/chartercities>

Article IX, Section 5 of the California Constitution states that "it shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith." This power for charter cities to establish their own rules when governing their own municipal affairs is commonly called "Home Rule."

The Prevailing Wage Exemption Is Legal

As of the publication of this report, prevailing wage and apprenticeship training laws (California Labor Code 1720-1781) are considered municipal affairs and thus fall under control of a charter city.

The State Building and Construction Trades Council of California, AFL-CIO, an umbrella group for construction unions, sued the City of Vista in July 2007 for exercising its right as a charter city to exempt its purely municipal public works from state prevailing wage requirements. The unions claimed that prevailing wage is actually a matter of "statewide concern" and therefore the City of Vista must require contractors to pay prevailing wages.

On April 28, 2009, California's 4th District Court of Appeal issued an opinion that the state's prevailing wage law does not address matters of statewide concern and therefore Vista, as a charter city, is not required to comply with the prevailing wage law with respect to public works contracts that are financed solely from city revenues. The case is *State Building and Construction Trades Council of California, AFL-CIO v. City of Vista et al.* (Case #D052181).

There Are Many Good Reasons for a Charter City to Avoid Prevailing Wage Mandates

California has the most complicated, convoluted, expansive prevailing wage law in the country. A 1995 study by economist A.J. Theoblot (*State Prevailing Wage Laws: An Assessment at the Start of 1995*) ranked the state's prevailing wage policies as the third most onerous (behind Massachusetts and New York), but then the administration of Governor Gray Davis (1999-2003) greatly expanded the coverage of prevailing wage requirements.

The frequency of lawsuits and administrative actions concerning prevailing wage demonstrate not so much an unwillingness of contractors to follow the law but the ambiguity of the law itself. The Director of the California Department of Industrial Relations is constantly issuing "determinations" to decide what obscure conditions subject a privately-owned project to prevailing wage requirements.

"Prevailing Wage" Is a Misnomer

In a moderately-regulated free market, how can the government of the State of California actually determine a "prevailing wage" – including health benefits, pension benefits, vacation, sustenance, travel costs, training expenses, and fees for other union programs (regarded incorrectly by the state as compensation) – for every construction trade in every geographical region of the state? The answer is that the State cannot and does not determine true prevailing wages.

The state doesn't determine prevailing wages through surveys of local contractors or workers. It does not determine the average wage or even the median wage for workers. Instead, as a result of a bill signed in 1999 by Governor Gray Davis (Senate Bill 16), the state determines the prevailing wage using the "modal rate," or the single rate paid to the greatest number of workers. [See Labor Code §1773.9(b)(1)] In a free market, workers are paid a variety of rates, so the single rate paid to the greatest number of workers is always the rate for union workers under a collective bargaining agreement.

The state determines prevailing wages for construction workers by simply obtaining the collective bargaining agreements from unions with jurisdiction in a specific geographic region for a specific trade and adopting the rates contained in those agreements as the prevailing wages. [See Labor Code §1773] The applicable agreements are filed at the Division of Labor Statistics and Research office in San Francisco.

Such a policy establishes strange conditions for prevailing wage rates. For example, the Northern California Carpenters collective bargaining agreement negotiated with Associated General Contractors from 2000-2004 included a provision increasing the prevailing wages when a project was worth \$25 million or more. The state dutifully incorporated this provision into the prevailing wage rates without interpretation or explanation, even though there is nothing in state law that authorizes a higher prevailing wage as the project cost increases. To complicate matters, another construction trade association then contended that its collective bargaining agreement for carpenters superseded the one with the \$25 million project threshold because its agreement represented a greater number of carpenters.

Some collective bargaining agreements encompass a very large area. For example, 9 trades have a statewide agreement and 28 trades have a Northern California agreement, including Carpenter, Laborer, Drywall, and Operating Engineer.

Prevailing Wage Now Includes Fees for Union Programs

In 2003, Governor Gray Davis signed into law Senate Bill 868, which added to prevailing wage the payments indicated in collective bargaining agreements for labor compliance programs, so-called industry advancement funds, and collective bargaining agreement administrative fees. These payments are incorporated into a category in prevailing wage determinations known as "Other." Taxpayers now pay for these programs through prevailing wage requirements.

For example, when a local government requires contractors to pay prevailing wage to Carpenters in Northern California, the prevailing wage amount includes payments to the following funds listed in the Northern California collective bargaining agreement for Carpenters:

- California Construction Advancement Program
- California Builders Advancement Program
- Builders Industry Promotion Trust Fund
- Construction Industry Advancement Fund
- Building Industry Marketing Program
- Carpenter Employers Contract Administration Trust Fund
- Carpenters Work Preservation Committee Trust

"Public Works" Now Encompasses Much More than City Projects

As a result of Senate Bill 975, signed into law by Governor Gray Davis in 2001, public works are now much more than city roads, firehouses, libraries, and projects most people would recognize as government buildings. Public works are now any privately-funded and privately-built projects that receive grants from the city, or transfers of assets from the city for less than market value, or loans from the city to be repaid on a contingent basis, or fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the city. (See Labor Code §1720)

SB 975 has discouraged developers from building numerous commercial projects. In particular, it discourages the construction of affordable housing. It also discourages community organizations or businesses from applying for city grants for construction-related work.

Prevailing Wage Imposes Costly State Mandates on Cities

The state requires local governments to collect and review (and on occasion audit) certified payroll records submitted by contractors to ensure compliance with the prevailing wage law, even going so far as to withhold contract payments if the records are delinquent or inadequate. (Labor Code §1771.5)

Prevailing wage forces a city to contemplate work jurisdictional disputes, for example between roofers' unions and sheet metal worker unions and between electrician unions and laborers unions. The city needs to know if contractors are classifying their workers correctly for prevailing wage purposes. Then there are issues related to "double asterisks" indicated in the prevailing wage determinations in which the wages change in the middle of a project, because rates change on a specific date in the applicable collective bargaining agreement. And there is travel and subsistence pay where the contractor or interested party has to call the state prevailing wage unit for information. Why must a city be entangled in these issues?

The State May Soon Require Your Community Volunteers to be Paid Prevailing Wages

Certain construction unions and the American Federation of State, County and Municipal Employees (AFSCME) are suspicious of civic volunteers doing work that could be done by workers who would be paid a prevailing wage. While Labor Code §1720.4 has exempted volunteers from prevailing wage requirements since an emergency law took effect in 2004, that exemption has been limited in duration. The current exemption period is scheduled to end on January 1, 2012. By law, the Director of the Department of Industrial Relations is

required to submit a report to the legislature by January 1, 2011 about the use of volunteers on public works projects. Surely this report will be used as a rationale to require community volunteers to be paid prevailing wages for work that falls under the broad trade classifications for prevailing wage coverage.

Studies and Anecdotes Show the High Costs of Prevailing Wage

A paper published in 2005 by the Program on Housing and Urban Policy at the University of California, Berkeley presented new evidence on the increased costs of California's prevailing wage laws on construction. "The Effects of Prevailing Wage Requirements on the Cost of Low-Income Housing" estimates that new prevailing wage requirements under Senate Bill 975 signed into law by Governor Davis in 2001 increased costs on state-subsidized low-income housing in California between 9 and 37 percent under the most credible statistical models, which take into account geographical location as well as project attributes, financing, and developer characteristics. According to the paper, under reasonable conditions, the authors' mid-range estimate of the prospective decrease in dwellings in California subsidized by tax credits alone exceeds 3,100 units per year. Research for this paper was supported by a grant from the U.S. Department of Housing and Urban Development and the Berkeley Program on Housing and Urban Policy. See the study at this link:

http://urbanpolicy.berkeley.edu/pdf/DQR_ILRR_Proof072905.pdf

A 2004 study from the California Institute for County Government at California State University, Sacramento shows that state prevailing wage rates in California increase costs of construction six to more than fifteen percent. The maps in this study show that in general prevailing wages become disproportionately higher than market wages the farther a project is from San Francisco. A link to this study can be found here:

http://www.abc.org/files/Government_Affairs/StateAffairs/CA%20Prevailing%20Wage%20Study%202004%20from%20Dayton%20CSUS.pdf

After Senate Bill 975 was signed into law in 2001, dozens of California newspaper articles reported on private development projects that were cancelled because of the cost increases caused by new prevailing wage requirements on privately-owned projects.

Summary of Findings

Because Charter Cities have a greater degree of autonomy and flexibility than general law cities, a central question this report seeks to answer is whether or not these Charter Cities are using their flexibility to maximum advantage to both protect taxpayer funds and support local job creation by exempting themselves from state prevailing wage mandates.

Charter Cities with No Exemption

Alameda	Pomona
Albany	Port Hueneme
Alhambra	Redondo Beach
Bakersfield	Redwood City
Berkeley	Richmond
Big Bear Lake	Riverside
Buena Park	Roseville
Burbank	Salinas
Cerritos	San Bernardino
Chico	San Francisco
Compton	San Jose
Culver City	San Leandro
Cypress	San Luis Obispo
Del Mar	San Mateo
Downey	San Rafael
Eureka	San Ramon
Folsom	Sand City
Grass Valley	Santa Ana
Glendale	Santa Barbara
Hayward	Santa Clara
Huntington Beach	Santa Cruz
Inglewood	Santa Monica
Kingsburg	Santa Rosa
Lemoore	Seal Beach
Loma Linda	Signal Hill
Long Beach	Stockton
Los Alamitos	Torrance
Los Angeles	Vallejo
Marina	Ventura
Monterey	Vernon
Napa	Victorville
Newport Beach	Watsonville
Oakland	Woodlake
Petaluma	

Total- 67

Charter Cities with Partial Exemption

Anaheim
Fortuna
City Of Industry
Fresno
Irvine
Mountain View
Oroville
Sacramento
San Diego
Santee
Sunnyvale
Truckee

Total-12

Charter Cities with Full Exemption

Adelanto
Arcadia
Carlsbad
Chula Vista
Desert Hot Springs
Dinuba
Exeter
Gilroy
Indian Wells
Irwindale
La Quinta
Lindsay
Marysville
Merced
Modesto
Needles
Norco
Pacific Grove
Palm Desert
Palm Springs
Palo Alto
Pasadena
Placentia
Porterville
Rancho Mirage
San Marcos
Santa Maria
Shafter
Solvang
Temple City
Tulare City
Visalia
Vista
Whittier

Total-34

*Piedmont did not respond to numerous phone calls and e-mails.



CHARTER CITIES: CHARTING THEIR OWN PATHS ... BUT NOT WITHOUT OBSTACLES

Written by JT Long

November 16, 2009

As California's state government struggles to solve budget deficits and other critical problems in the state, voters seem eager to give their communities a greater degree of independence from state laws.

On November 4, voters in Palmdale and El Centro overwhelmingly approved charters for their cities, thus creating the 115th and 116th charter cities in the state.

The steady trickle of new charter cities in the state threatens to become a flood, as at least a dozen of the 362 remaining "general law" cities in the state are considering charters that would potentially supersede state laws concerning government structure, election management, and contracting out services.

But even as general law cities move to free themselves from state control over their local affairs, powerful interest groups at the capitol are venturing into local politics to blunt the expansion of local authority.

What is a Charter City?

Charter city status is included as an option in the state constitution based on the principle that a city, rather than the state, is in the best position to know what it needs and how to satisfy those needs.

According to the League of California Cities primer *Charter Cities vs. General Law Cities*, "The benefit of becoming a charter city is that charter cities have supreme authority over 'municipal affairs.'"

Municipal affairs are usually defined as:

- Regulation of the police
- Subgovernment
- Conduct of city elections
- Manner in which municipal officers are elected
- Local taxes

However, this is not an exhaustive list and a charter city can rule over any number of issues not specifically spelled out in the charter if it includes language that declares the city intends to avail itself of the full power provided by the California Constitution.

That language can be drafted by a city governing board or an elected charter commission and then ratified by a majority of voters.

Only when there is determined to be a "paramount state control" do state regulations on issues such as traffic and school regulation take precedence.

Not a Silver Bullet

Ruben Duran, city manager of El Centro, which passed its charter measure last week with a 60 percent approval, warns a charter is not a cure-all. It simply optimizes local government; it doesn't fix a dysfunctional one.

"It is not a panacea," Duran said.

What a charter will do is hold local government accountable so council members can't blame the state for things like having to hire out of area contractors.

Local control over bidding was the impetus for El Centro's task force. The rural city was looking for ways to save money on contracting.

The charter commission explored all options for two years and discovered that any exception to the state prevailing wage provision will not impact 90 percent of projects. Any projects that include federal or state funding or require high-end skills will still require paying higher wages. However saving money on that 10 percent of projects could help the city make their dollars go farther.

The city will also be able to use design-build contracts without the state's convoluted requirements. This can reduce the amount of time required for bidding.

Duran, who has worked in three other charter cities, pointed to a park restroom project that would have cost the city \$140,000 under prevailing wage and came in at \$110,000 without the provision. "That \$30,000 could go toward building another restroom in another park," Duran said.

The loss of the prevailing wage requirement could also attract more local bidders because they would not have to meet all the reporting requirements or carry two payroll systems based on the project, Duran reasoned.

The commission's analysis of prevailing versus going wage for a new \$26 million water treatment plant did not show a huge savings because the technical work would require paying higher wages. "Although saving even a little bit can be the difference between doing a project and not doing it," Duran said.

El Centro still has to adopt the norms and procedures that will shape government in the city. Duran plans to start with the generic wording used in the City of Vista and in League of California Cities documents and adopt it to fit El Centro.

In the future, the charter, which includes a requirement for a council-city manager form of government, would require a 4/5 vote of the council to make significant changes.

"Our goal was to better control how local dollars are spent," Duran said.

Built in Flexibility

In Palmdale, the charter measure passed with 82 percent in favor. The Los Angeles suburb began exploring the pros and cons of charter status in May after a city councilman was elected to the legislature and a state mandate forced the city to hold an expensive special election to replace him. "We were looking for flexibility, ways to save money," said Sayne Redifer, assistant to the city manager.

The city held dozens of public outreach meetings and concluded adopting the city charter language without some of the more controversial items like exemption of prevailing wage requirements was the best way to achieve that flexibility. They came to this conclusion specifically because regional labor unions threatened to oppose and defeat the proposed charter if it exempted Palmdale from state prevailing wage mandates.

A Political Process

The city of Elk Grove near Sacramento is nearing the end of a two-year process that included a task force and charter commission.

Commission chair and real estate broker Jake Allen said the group looked at the option of directly electing a mayor, redistricting, rural boundary protections and taxpayer protections in the form of indebtedness limits. The group made its recommendations to council. He then watched it change contrary to the work he and other citizen-volunteers invested.

Allen worries that the charter that is finally presented to voters in June of 2010 will be much different than the one recommended by the resident commission.

Although the council originally didn't ask the commission to address the issue of prevailing wage, during one of the final hearings, it adopted language drafted explicitly by the Sacramento Sierra Building Trades Council that would require both prevailing wage and apprenticeship programs on all city funded projects.

"The language effectively clears the field of any non-union companies," said Jake Rambo, a Charter commissioner.

"Adopting that language without regular staff analysis or citizen feedback violated the council's own standard procedures," Rambo said.

Rambo blamed the insertion on labor's contribution to three councilmen's campaigns.


"Other cities need to be prepared for the onslaught of special interest aligned with labor eager to push the same agenda," Rambo said.

"We didn't believe that language on prevailing wage belonged in the charter," Allen said. "That politicized the whole thing."

Allen is waiting to see what charter language ends up on the ballot to determine whether he will spend the next year campaigning for the measure — or not.

JT Long can be reached at jtlongandco@gmail.com

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Comment

**CHARTER
OF THE
CITY OF VISTA**

PREAMBLE

WE THE PEOPLE of the City of Vista declare our intent to restore to our community the historic principles of self governance inherent in the doctrine of home-rule. Sincerely committed to the belief that local government has the closest affinity to the people governed, and firm in the conviction that the economic and fiscal independence of our local government will better serve and promote the health, safety and welfare of all the citizens of this City, we do hereby exercise the express right granted by the Constitution of the State of California to enact and adopt this Charter for the City of Vista.

CHARTER

**Article 1
Municipal Affairs**

Section 100. Municipal Affairs

Each of the responsibilities of governance set forth and described in this Charter, and as established by the Constitutional, statutory and judicially defined law of the State of California, is hereby declared to be a municipal affair or concern, the performance of which is unique to the benefit of the citizens of the City of Vista.

Section 101. Powers

The City shall have all powers that a City can have under the Constitution and laws of the State of California as fully and completely as though they were specifically enumerated in this Charter. The enumeration in this Charter of any particular power, duty or procedure shall not be held to be exclusive of, or any limitation or restriction upon, this general grant of power.

Section 102. Incorporation and Succession

The City shall continue to be a municipal corporation known as the City of Vista. The boundaries of the City of Vista shall continue as now established until changed in the manner authorized by law. The City shall remain vested with and shall continue to own, have, possess, control and enjoy all property rights and rights of action of every nature and description owned, had, possessed, controlled or enjoyed by it at the time this Charter takes effect, and is hereby declared to be the successor of same. It shall be subject to all debts, obligations and liabilities, which exist against the City at the time this Charter takes effect. All lawful ordinances, resolutions, rules and regulations, or portions thereof, in force at the time this Charter takes effect and not in conflict with or inconsistent herewith, are hereby continued in force until the same have been duly repealed, amended, changed or superseded by proper authority.

Article 2 Form of Government

Section 200. Form of Government

The municipal government established by this Charter shall be known as the "Council-Manager" form of government. The City Council will establish the policy of the City and the City Manager will carry out that policy.

Article 3 Fiscal Matters

Section 300. Public Works Contracts

The City is exempt from the provisions of all California statutes regulating public contracting and purchasing except as provided by ordinance or by agreement approved by the City Council. The City shall establish all standards, procedures, rules or regulations to regulate all aspects of public contracting.

Section 301. Economic and Community Development

The City shall encourage, support, and promote economic development and community development in the City.

Article 4 Revenue Retention

Section 400. Reductions Prohibited

Revenues raised and collected by the City shall not be subject to subtraction, retention, attachment, withdrawal or any other form of involuntary reduction by any other level of government.

Section 401. Mandates Limited

No person, whether elected or appointed, acting on behalf of the City, shall be required to perform any function which is mandated by any other level of government, unless and until funds sufficient for the performance of such function are provided by said mandating authority.

Article 5 General Laws

Section 500. General Law Powers

In addition to the power and authority granted by the terms of this Charter and the Constitution of the State of California, the City shall have the power and authority to adopt, make, exercise and enforce all legislation, laws and regulations and to take all actions and to exercise any and all rights, powers, and privileges heretofore or hereafter established, granted or prescribed by any law of the State of California or by any other lawful authority. In the event of any conflict between the provisions of this Charter and the provisions of the general laws of the State of California, the provisions of this Charter shall control.

Article 6 Interpretation

Section 600. Construction & Interpretation

The language contained in this Charter is intended to be permissive rather than exclusive or limiting and shall be liberally and broadly construed in favor of the exercise by the City of its power to govern with respect to any matter which is a municipal affair.

Section 601. Severability

If any provision of this Charter should be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

SENATE RULES COMMITTEE	AB 2537
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916)	
327-4478	

THIRD READING

Bill No: AB 2537
 Author: Furutani (D)
 Amended: 8/29/08 in Senate
 Vote: 21

SENATE LABOR & INDUS. RELATIONS COMMITTEE: 3-2, 6/25/08
 AYES: Migden, Kuehl, Padilla
 NOES: Wyland, Ackerman

SENATE APPROPRIATIONS COMMITTEE: Not available

ASSEMBLY FLOOR: 75-0, 5/19/08 - See last page for vote

SUBJECT: Public works: exemption: volunteers

SOURCE: California Association of Local Conservation
 Corps
 Sacramento Local Conservation Corps

DIGEST: This bill allows volunteers to continue
 contributing their labor to public works projects, and
 provides for an evaluation of the impact of such
 participation.

ANALYSIS:

Existing Law

1. Defines public works as any construction, alteration, demolition, installation or repair work done under

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contract and paid for in whole or in part from public funds. This includes work performed during the design and pre-construction phase, including, but not limited to, inspection and land surveying.

2. Requires, with certain exceptions, contracted public works projects to be submitted for bids by the public entity requesting the work, and that the contract is awarded to the lowest responsible bidder. The awarding body is required to ensure that the winning contractor is appropriately licensed with the Contractors' State Licensing Board, and has not been in barred from bidding on, accepting, or performing public contracts.
3. Requires all employees who work on public works projects with a budget of \$1,000 or more to be paid the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work for the specific location where the public work is to be performed. This prevailing wage is determined by the Department of Industrial Relations (DIR).
4. Exempts from public work requirements any project where the Department of Fish and Game (DFG) contracts with public agencies, Indian tribes, or nonprofit organizations for fish and wildlife habitat preservation, restoration, and enhancement. Existing law also allows the DFG to contract with public and private entities for fish and wildlife habitat preservation, restoration, and enhancement, but these contracts are only exempt from public work requirements if they are less than \$50,000.
5. Exempts any work performed by volunteers from the public works requirements, but the exemption allowing

volunteers on public works projects is set to expire on January 1, 2009.

6. Volunteers are defined as:

- A. Individuals who perform works for civic, charitable, or humanitarian reasons for a public agency or tax-exempt organization, such as a 501(c)(3), without any compensation.

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- B. Volunteer coordinators.

Members of the California Conservation Corps (CCC) or the Community Conservation Corps are also exempt.

7. Excludes from the definition of a volunteer:

- A. Anyone who works on the public works project for compensation.
- B. Anyone who received payment from the contractor on the public works project for construction, alteration, demolition, installation, repair, or maintenance work on the same project.

This bill:

1. Extends the sunset on the exemption for volunteers on public works project out three years, from January 1, 2009 to January 1, 2012.
2. Requires the Director of the DIR to submit a written report to the Legislature by January 1, 2011 that does the following:
 - A. Describes the number and nature of complaints received and investigations conducted involving the use of volunteers on public works projects.

- B. Provides an estimate, for specified projects, of the number of hours per year that volunteers work on public works projects, the cost per year of public works projects and the percentage of work performed by volunteers, and the types of work done by volunteers on public works projects.
- 3. Appropriates \$100,000 from the Environmental License Plate Fund for purposes of completing the report.
- 4. States that the Legislature finds and declares that:
 - A. It is the intent of the Legislature that public works projects should never undermine the wage base

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in a community.

- B. The requirement that workers on public works projects be paid the prevailing rate of per diem wages ensures that the local wage base is not lowered.
- C. This Act shall not apply to the work of state and local public sector employees.

Background

This bill revisits an issue that arose in 2004 concerning the use of volunteer labor on certain public works projects. Much of the attention that arose at that time was a result of an enforcement action taken by DIR in July 2003 in relation to a stream restoration project in Shasta County.

In fiscal year 2000-01, the Department of Water Resources (DWR) provided grant funding to the Sacramento Watersheds Action Group for a stream restoration project on Sulphur Creek in the City of Redding. According to media reports,

students from nearby Shasta College were used for various activities including planting seeds, clearing brush, repairing culverts, installing rock beds to prevent erosion, and trash removal. The students reportedly earned course credit for classes in watershed restoration.

Responding to a complaint from a local labor organization, DIR investigated and determined that, based on the submitted job descriptions of the work performed by students and volunteers, prevailing wages were required for the following work: willow staking, spreading seeds and mulch, planting shrubs, operating heavy equipment, site cleanup, off-hauling garbage, and planting vegetation. The subsequent DIR enforcement action assessed back wages and civil penalties.

In September 2003, DWR issued a memorandum that stated, "Due to the serious implications to our programs that would arise from being unable to support volunteerism, DWR is taking a conservative approach until these issues can be clarified. We will not enter into any new contracts

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possibly affected by these issues until we have a clearer picture of the obligations of DWR and the grantees under the Labor Code." Following the July 2003 enforcement action, there was an outcry among many in the environmental community that the prior Labor Code Section 1720.4, as interpreted by DIR, effectively prohibited the mixed use of volunteer and paid labor on public works projects.

After lengthy negotiations between the environmental community and representatives of organized labor, the Legislature enacted AB 2690 (Hancock), Chapter 330, Statutes of 2004. AB 2690 amended Labor Code Section 1720.4 into its current form. In order to address concerns that there may be abuses of any "volunteer" exemption to California's prevailing wage laws, AB2690 contained a January 1, 2009 sunset date.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2008-09</u>	<u>2009-10</u>
<u>2010-11 Fund</u>		
Sunset extension of		no new costs
through 1/1/2011		Various
limited exemption from		
public works definition		
DIR study	\$100	Special*

*Environmental License Plate Fund

SUPPORT : (Verified 8/29/08)

California Association of Local Conservation Corps
(co-source)
Sacramento Local Conservation Corps (co-source)
Board of Supervisors of Sacramento County
California Council of Land Trusts
California Invasive Plant Council
California Native Plant Society

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California Outdoor Heritage Alliance
California Park and Recreation Society
California Regional Council of Rural Counties
California ReLeaf
California Special Districts Association
City of El Cerrito
City of Long Beach
City of Redding
Coalition to Protect Watershed Volunteers and California's
Prevailing Wages
Community Services Employment Training

Friends of Harbors, Beaches, and Parks
 Glenn County Resource Conservation District
 Marin Conservation Corps
 Maritime Museum of San Diego
 Newport Beach Chapter of the Surfrider Foundation
 Ocean Institute
 Planning and Conservation League
 Regional Council of Rural Counties
 Regional Open Space
 Sacramento Valley Rugby Foundation
 Salmonid Restoration Federation
 San Diego Association of Nonprofits
 San Francisco Conservation Corps
 San Francisco Maritime National Park Association
 Save The Bay
 Sierra Nevada Alliance
 Solano County Water Agency
 The Nature Conservancy
 The Trust for Public Land
 Urban Corps of San Diego County

ARGUMENTS IN SUPPORT: The author's office argues that volunteer use maximizes available and limited grant funds that are designated for important community purposes. In 2006, California volunteers contributed approximately 860 million hours of community service. Volunteers continue to support California every day as they build Little League fields, create school gardens, plant trees, beautify neighborhoods, and engage in numerous other important activities. There have been no complaints of exemption abuse to the State Labor Commissioner or to the Department of Industrial Relations, say supporters, and California volunteers should remain exempted from the prevailing wage

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requirement. This bill extends the sunset on the exemption and allow for an evaluation of any problems.

ASSEMBLY FLOOR:

AYES: Adams, Aghazarian, Anderson, Arambula, Beall,
Benoit, Berg, Berryhill, Blakeslee, Brownley, Caballero,
Charles Calderon, Carter, Cook, Coto, Davis, De La Torre,
De Leon, DeSaulnier, DeVore, Duvall, Dymally, Emmerson,
Evans, Feuer, Fuentes, Fuller, Furutani, Gaines,
Galgiani, Garcia, Hancock, Hayashi, Hernandez, Horton,
Houston, Huff, Huffman, Jeffries, Jones, Karnette, Keene,
Krekorian, La Malfa, Laird, Leno, Levine, Lieber, Lieu,
Maze, Mendoza, Mullin, Nakanishi, Niello, Nunez, Parra,
Plescia, Portantino, Price, Sharon Runner, Ruskin, Salas,
Saldana, Silva, Smyth, Solorio, Spitzer, Strickland,
Swanson, Torrico, Tran, Villines, Walters, Wolk, Bass
NO VOTE RECORDED: Eng, Garrick, Ma, Nava, Soto

NC:do 8/28/08 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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